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DISTRICT COURT  
TERRY HALPIN

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

DEPUTY

IN RE THE ESTABLISHMENT OF A  
DISTRICT STANDING MASTER  
FOR ALL DEPARTMENTS OF THE  
DISTRICT COURT

Cause No.: SB 22-1

**REVISED CHARTER ORDER IN RE  
DISTRICT STANDING MASTER  
ESTABLISHMENT & PROCEDURE**

The judges of the Thirteenth Judicial District Court hereby revise the previous Charter Order filed August 28, 2015 to incorporate and establish two (2) District Standing Master positions (one full time; one part-time) for Departments 1 through 8 of the District (hereafter Master or Masters). Pursuant to Mont. Code Ann. §§ 3-5-124 to 3-5-126 and Mont.R.Civ.P. Rule 53, the terms of this Order shall constitute and redefine the jurisdictional charter, structure, and general procedure for proceedings before the Master.

**1. Purpose Of Establishment Of Master.**

The Montana Supreme Court, by and through the Hon. Chief Justice and the Office of Supreme Court Administrator, has authorized two Masters (one full time; one shared with the Twenty-Second Judicial District) to jointly serve all eight Departments of the Thirteenth Judicial District Court. The district court workload study of 2014 revealed the Thirteenth Judicial District needed five more district court judges, of which two were approved and took office in 2019 in Departments 7 and 8. The needs of the district still outweigh the judicial resources available. Two Masters for Departments 1 through 8 are therefore needed to relieve workload and improve service

to litigants in all types of cases by referring selected matters to the Masters at the discretion of the eight district court judges.

## **2. Enabling Authority.**

Upon appointment of a Master, the district court may refer civil matters to the Master for disposition subject to district court review. Mont. Code Ann. §§ 3-5-124 to 3-5-126 (2013); M.R.Civ.P. Rule 53. Consent of the parties for referral is not required. Mont. Code Ann. § 3-5-126(3). The district court retains broad discretion to specify or limit the scope of a Master's authority by standing order or order of special referral. Mont. Code Ann. § 3-5-124(2); M.R.Civ. P. Rule 53(c)(1).

Mont. Code Ann. §§ 3-5-113 and 3-5-114 specify the qualifications for *special* masters and judges *pro tempore*. In contrast, neither Title 3, Chapter 5, Part 1 of the Mont. Code Ann. nor M.R.Civ.P. Rule 53 specify the qualifications or procedure for establishing and appointing a Master under Mont. Code Ann. § 3-5-124. In mandating qualifications for a Master, the district court has inherent and implied power and authority to adopt "any suitable process or mode of proceeding . . . which may appear most conformable to the spirit of this code." Mont. Code Ann. § 3-1-113. Accordingly, the Court hereby adopts the criteria of Mont. Code Ann. § 3-5-114 as the qualifications for a Master and the provisions of this Order as the procedure for establishing and appointing a Master.

## **3. General Structure – Scope Of Authority.**

The presiding judges of the Thirteenth Judicial District may appoint a qualified individual to serve as a Master in accordance with the terms of this Order. Mont. Code Ann. § 3-5-124. Upon appointment, the Master shall serve under this Order and in compliance with Mont. Code Ann. §§ 3-5-124 to 3-5-126 and M.R.Civ.P. Rule 53.

The Master shall, upon order of referral, be responsible for the administration and disposition of cases referred. Pursuant to Mont. Code Ann. §§ 3-5-124 to 3-5-126 and M.R.Civ.P. Rule 53(c)(2), the Court hereby charges, delegates, vests, and confers the following specific and general powers, authority, and duties upon the Master under this Order:

- (1) to assume jurisdiction over and adjudicate all procedural and substantive aspects of proceedings referred for disposition pursuant to this Order;
- (2) to schedule, compel attendance at, and conduct all evidentiary hearings, bench trials, oral arguments, or other proceedings required, necessary, or proper within the scope of this Order;
- (3) to administer oaths and issue subpoenas on behalf of the court in the manner otherwise provided by law;
- (4) to compel and take evidence and rule on its admissibility as required, necessary, or proper;
- (5) to issue mesne or preliminary orders, including but not limited to scheduling and discovery orders pursuant to M.R.Civ.P. Rules 16 and 26-27, in the same manner as otherwise provided by law for district courts;
- (6) to control and regulate all proceedings before the Master; and
- (7) to perform any other lawful acts or measures necessary or proper within the scope of this Order in the same manner as the district court.

The Master shall perform his/her duties subject to and in accordance with the terms of this Order, state statute, prevailing case law, and all substantive and procedural law, rules, and regulations otherwise applicable to proceedings before the court, including but not limited to the Montana Rules of Civil Procedure, Montana Rules of Evidence, Montana Uniform District Court Rules, and Local Rules of the Thirteenth Judicial District. The referring court may, by way of the order of referral, more particularly specify, limit, or expand the scope of the Master's authority, function, or duty in a particular case. Mont. Code Ann. § 3-5-124(2)(a); M.R.Civ.P. Rule 53(c)(1). The referring department shall retain and exercise supervisory control over the Master on cases

referred when extraordinary circumstances and the interests of justice require supervision and ordinary district court review under Mont. Code Ann. § 3-5-126(2) is not an adequate remedy. In the interests of justice and in the sole discretion of the court, the referring court may by order rescind a case referral and reassume primary administration of the case.

#### **4. General Procedure.**

(A) Referral And Initial Meeting. A judge of the Thirteenth Judicial District, in his or her sole discretion, may by order refer cases within the judge's jurisdiction to the Master for proceedings and disposition pursuant to this Order. Once the case is referred, the Master shall set appropriate conferences, hearings, and/or trials at his/her discretion.

(B) When Hearing Not Required. When a hearing is not otherwise required by law, the Master may file and serve an appropriate order and judgment upon the matters submitted under the referral. Mont. Code Ann. § 3-5-126(1).

(C) When Hearing Required. When a hearing is required by law or in the Master's discretion, the Master shall notice and conduct a hearing in accordance with Mont. Code Ann. § 3-5-126 and this Order.

(D) Record, Filing Procedure, And Clerk Of Court Duty.

The Master shall record all contested proceedings either by means of a certified court reporter or audio or video recording suitable to facilitate production of a verbatim transcription of proceedings for district court and appellate review. Mont. Code Ann. §§ 3-5-124(2)(c). The Master shall file the evidence and a recording of all contested proceedings with the Clerk of District Court. Mont. Code ann. § 3-5-126(1). The Clerk of District Court shall attend all contested proceedings before a Master and act as the clerk of proceedings before the Master in the same manner as proceedings before the district court. Mont. Code Ann. § 3-5-501. In cases referred to the Master,

the parties and Clerk of Court shall file all pleadings, motions, briefs, and other filings in the ordinary course in the court file for the subject cause.

(E) Form Of Decision. The Master shall file and serve written findings of fact, conclusions of law, and a dispositive order for all contested proceedings tried upon the facts. Mont. Code Ann. § 3-5-126(1); M.R.Civ.P. Rule 52(a). The Master shall file and serve a dispositive written decision and order for all contested proceedings not tried upon the facts.

(F) Filing Of “Master’s Report” And Objections Procedure.

As distinct from non-dispositive scheduling, mesne, or other preliminary orders and rulings, an adjudicatory or dispositive order of the Master on a contested proceeding shall constitute the “master’s report” for purposes of Mont. Code Ann. §§ 3-5-125(1) and 3-5-126(3), thereby triggering the district court review deadline. Mont. Code Ann. § 3-5-126(2). Objections to the master’s report must comply with Uniform District Court Rule 2, Local Rule 5, and Mont. Code Ann. § 3-5-126(2). Failure to strictly adhere to substantive and procedural rules regarding objections to the master’s report shall subject the party’s objections to adverse summary ruling.

(G) Effect/Enforceability Of Report As Court Order. Upon filing and except as otherwise expressly stayed by written order of the Master or the court, the master’s report shall be immediately effective and enforceable as an order of the court subject to subsequent reversal, remand, revision, or supersedence by subsequent written order of the district court upon review of a timely-filed objection. The filing of objections or district court review does not automatically stay or nullify the effect or enforceability of the Master’s order. Upon expiration of the objections deadline, the master’s report shall by operation of law become a final dispositive judgment. If proper and timely objection is made, the district court shall conduct a hearing to review the master’s report. Mont. Code Ann. § 3-5-126(2).

(H) Standard Of District Court Review. Upon review of a judgment (master's report) of the Master, the district court, after a hearing, "may adopt the [Master's] findings and conclusions or order and may modify, reject in whole or in part, receive further evidence, or recommit the findings and conclusions or order with instructions" to the Master. Mont. Code Ann. § 3-5-126(2). The court thus has broad discretion to affirm, reverse, modify, or remand a judgment of the Master. Although the court has discretion to take supplemental evidence, an aggrieved party has no vested right to present supplemental evidence upon judicial review of a judgment of the Master.

Except to the extent that it may elect to take supplemental evidence when warranted in the interests of justice, the standard of district court review of the findings of fact of the Master (master's report) is whether the findings of fact are clearly erroneous, giving due deference to the broad discretion of the Master to assess the relative credibility of the witnesses and the weight of the evidence. *Patton v. Patton*, 2015 MT 7, ¶ 24; 378 Mont. 22, 340 P.3d 1242; *Maloney v. Home & Investment Center, Inc.*, 2000 MT 34, ¶ 28, 298 Mont. 213, 994 P.2d 1124 (standard of review of judgments of master is same as for lower court judgments); *In re Marriage of Swanner-Renner*, 2009 MT 186, ¶ 13, 351 Mont. 62, 209 P.3d 238 (clear error standard requires due deference to the broad discretion of lower tribunal to assess the relative witness credibility of witnesses and weight of the evidence); *In re J.H.*, 2016 MT 35, ¶ 24, 382 Mont. 214, 367 P.3d 339 (substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion, even if weak and conflicting; it consists of more than a mere scintilla of evidence but may be less than a preponderance); M.R.Civ.P. Rule 52(a). The standard of review for a Master's conclusions of law is whether the conclusions are correct. *Patton*, ¶ 43.

A party challenging a judgment of the Master has the burden of showing on review that:

- (1) the Master's findings of fact are clearly erroneous;

- (2) the Master's conclusions of law are incorrect;
- (3) if the findings of fact are not clearly erroneous, the Master nonetheless abused his or her discretion in applying the facts to the applicable law; or
- (4) the interests of justice otherwise warrant the taking of supplemental evidence upon review.

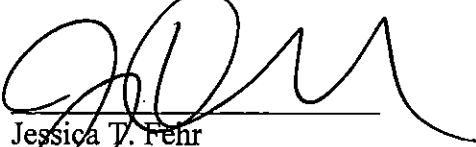
Patton, ¶ 42.

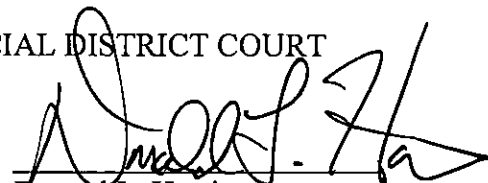
**7. Decorum, Orders, And Contempt.**

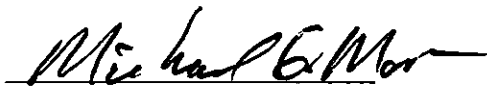
All parties and counsel shall formally treat and address the Master with the same formality, decorum, and respect required and customary in proceedings before a presiding district judge and in accordance with Local Rule 19. All parties and counsel shall obey and comply with orders of the Master in the same manner as orders of the court. Failure to comply with the orders of the Master will subject a party to contempt by the Master or the district court.

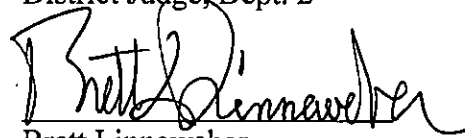
SO ORDERED this 2 day of February 2022.

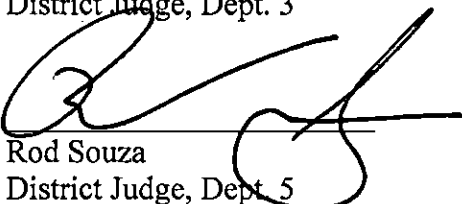
MONTANA THIRTEENTH JUDICIAL DISTRICT COURT


  
Jessica T. Fehr  
District Judge, Dept. 1


  
Donald L. Harris  
District Judge, Dept. 2

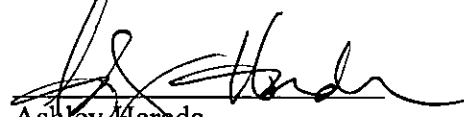
  
Michael G. Moses  
District Judge, Dept. 3

  
Brett Linneweber  
District Judge, Dept. 4

  
Rod Souza  
District Judge, Dept. 5

  
Mary Jane Knisely  
District Judge, Dept. 6

  
Colette B. Davies  
District Judge, Dept. 7

  
Ashley Harada  
District Judge, Dept. 8